

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into by and between The Federal Deposit Insurance Corporation, as receiver for IndyMac Bank, F.S.B., (the "FDIC"), on the one hand and Financial Title Company, Inc. ("Financial") on the other hand. The FDIC and Financial are referred to collectively as the "Parties."

- A. WHEREAS, the FDIC filed a Complaint against Financial entitled *Federal Deposit Insurance Corporation as Receiver of IndyMac Bank, F.S.B. v. Financial Title Co.* in United States District Court, Central District of California, Case No. cv09-3128 ("Civil Action").
- B. WHEREAS, Financial denies all liability for the claims alleged in the Civil Action;
- C. WHEREAS, without admitting liability, the Parties desire to resolve the FDIC's claims, including, but not limited to, all issues raised in the Civil Action, and agree as follows:

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES AND PROMISES AND AGREEMENTS CONTAINED HEREIN,

### IT IS AGREED AS FOLLOWS:

- 1. Within twenty (20) days after approval by the bankruptcy court and the execution of this Agreement, Financial shall pay the sum of six hundred eighty one thousand two-hundred sixty five dollars (\$681,265.00) by check made payable to the FDIC, in full settlement and compromise of the Civil Action, and in release and discharge of any and all claims and causes of action arising out of the ten loans at issue in the Civil Action. This settlement is expressly conditioned on approval by the bankruptcy court. Financial shall submit this matter to the bankruptcy court for approval no later than 30 days after the execution of this Agreement, and shall keep the FDIC apprised of the status of all court proceedings relating to the approval of this Agreement.
- 2. Except as set forth herein, the Parties agree to waive costs and to bear their respective attorney's fees incurred in connection with the Civil Action.
- 3. Within five (5) days after receipt of payment, the FDIC shall file a Request for Dismissal with Prejudice of the Complaint against Financial.
- 4. Release by the FDIC. The FDIC, as the Releasing Party, hereby releases and forever discharges Financial and its current and former officers, directors, employees, agents, insurers, attorneys, subsidiaries, predecessors, related companies, parent companies, successors, assigns, and affiliates, of and from any

and all claims, and demands of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, attorney's fees and costs, past, present and future, arising out of or in any way related to the claims set forth or would have been made in the Civil Action. The FDIC's pending claim against Financial arising out of the Sadiki escrow no. [REDACTED] is expressly excluded from this release. (b)(4)

5. Release of Unknown Claims. It is understood and agreed that this is a full, complete and final general release of any and all claims described as aforesaid, and the Releasing Parties agree that it shall apply to all unknown, unanticipated, unsuspected and undisclosed claims, demands, liabilities, actions or causes of action, as well as those which are now known, anticipated, suspected or disclosed, as described in Paragraphs 4 and 5 above. The Releasing Parties are aware of the contents of Section 1542 of the Civil Code of the State of California, and understand and agree that this section and the benefits thereof are hereby expressly waived. The provisions of Civil Code Section 1542 which reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

6. All Parties to this Agreement are advised and acknowledge that they have the right, prior to executing this document, to consult with attorneys of their choice as to this settlement, including the release of claims released herein, and as to the subject matter and other terms of this Agreement, including independent attorneys other than the attorneys for the Parties herein. The Parties hereto agree that they have each read and understand this Agreement, that they have had sufficient opportunity to consult with attorneys of their choice, including independent attorneys, prior to executing this Agreement and that they enter into this Agreement voluntarily with full knowledge of its significance as a final and binding settlement release of the claims described herein.
7. This Agreement shall not be construed as an admission by any party as to the truth or merit of any contention made regarding Financial's liability for the FDIC's damages as stated and alleged in the Civil Action, and is executed solely to avoid the cost of litigation and as a compromise of disputed liabilities.
8. The FDIC represents and warrants that it is the owner of the claims at issue as Receiver for IndyMac, F.S.B., and has not assigned or otherwise transferred any interest in any claims which are the subject matter hereof.

9. This Agreement contains the entire agreement between the Parties hereto and constitutes the complete, final and exclusive embodiment of their agreement with respect to the subject matter hereof. The terms of this Agreement are contractual and not a mere recital. This Agreement is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. The Parties have carefully read this Agreement, have been advised of its meaning and consequences by their respective attorneys, and sign the same of their own free will and without fraud, duress, or undue influence.
10. This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of California as applied to contracts made and to be performed entirely within California. This Agreement shall in all respects be interpreted, enforced and governed under the laws of the State of California.
11. The Parties agree to submit to the jurisdiction and venue of the United States District Court for the Central District of California, Western Division, to resolve any disputes regarding this Agreement. In the event that either party is required to bring a legal action to enforce any provisions of this Settlement Agreement and Release, the prevailing party shall be entitled to his reasonable attorney's fees and costs in pursuing such action.
12. This Agreement shall be binding upon the parties and upon their respective representatives, attorneys, successors, and assignees, and shall inure to the benefit of all Parties, as well as to their administrators, representatives, executors, successors and assignees. The Parties warrant that the individuals who shall execute this Agreement on their behalf are duly authorized to do so.
13. This Agreement was jointly drafted by the parties and the language of all parts of this Agreement shall in all cases be construed as a whole according to their meaning and not strictly for or against any of the parties. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which the other shall constitute the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be signed as of the date set forth by their signature.

Dated: July 22, 2010

By:

JOCK DUNCAN

Authorized on behalf of The Federal Deposit Insurance Corporation, as receiver for IndyMac Bank, F.S.B.

**APPROVED AS TO FORM:**

**MORTGAGE RECOVERY GROUP LAW GROUP**

(b)(6)

Dated: July 26, 2010

By:



MICHAEL H. DELBICK, attorney  
for Plaintiff The Federal Deposit Insurance  
Corporation, as receiver for IndyMac Bank, F.S.B.

**HAYES SCOTT BONINO ELLINGSON  
& MCLAY, LLP**

(b)(6)

Dated: <sup>August</sup> July 26, 2010

By:



STEPHEN A. SCOTT, attorney  
for Defendant FINANCIAL TITLE COMPANY,  
INC.